

③

No. 89-1008

Supreme Court, U.S.

FILED

JUN 21 1990

JOSEPH F. SPANIOLO, JR.  
CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term 1989

\_\_\_\_\_  
DWIGHT H. OWEN

Petitioner

vs

HELEN OWEN

Respondent

\_\_\_\_\_  
ON WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

\_\_\_\_\_  
JOINT APPENDIX

\_\_\_\_\_  
Roger L. Fishell\*  
Isidore Kirshenbaum, P.A.  
1900 Main Street  
Sarasota, Florida 34236  
(813) 351-2883  
Counsel for Petitioner

David A. Townsend  
Townsend & Arnold  
220 E. Madison Street  
Tampa, Florida 33602  
(813) 221-5688  
Counsel for Respondent

\*Counsel of Record

\_\_\_\_\_  
Petition for Writ of Certiorari  
filed November 29, 1989  
Certiorari Granted May 14, 1990

BEST AVAILABLE COPY

## TABLE OF CONTENTS

Relevant Docket Entries

United States Bankruptcy Court.....	1
United States District Court.....	4
United States Court of Appeals.....	6
United States Supreme Court.....	7

United States Bankruptcy Court

Order on Motion to Amend or Make Additional Findings of Fact Pursuant to Rule 7052(b) and to Alter or Amend the Order on Motion to Avoid Judgment Lien Pursuant to Rule 9023 (Printed as Appendix to Petition for Writ of Certiorari, pp. A24 - A27).....	8
---	---

United States District Court

Order and Judgment Affirming Order on  
Motion to Amend or Make Additional  
Findings of Fact Pursuant to Rule  
7052(b) and to Alter or Amend the  
Order on Motion to Avoid Judgment  
Lien Pursuant to Rule 9023 (Printed  
as Appendix to Petition for Writ of  
Certiorari, pp. A13 - A23, A32)..... 8

United States Court of Appeals

Opinion and Judgment Affirming Order  
and Judgment of United States District  
Court (Printed as Appendix to Petition  
for Writ of Certiorari, pp. A1 - A12,  
A30 - A31)..... 9

United States Court of Appeals(cont.)

Denial of Petition for Rehearing and Suggestion for Rehearing In Banc (Printed as Appendix to Petition for Writ of Certiorari, pp. A28 - A29)...	9
---	---

United States Supreme Court

Order Granting Petition for Writ of Certiorari .....	9
---	---

Federal Statutes Involved

11 USC 522(b).....	10
11 USC 522(f).....	12

Florida Constitutional Provisions

Article X, Section 4.....	13
Article XI, Section 5.....	15



**Chapter 222.20 . . . . . 16**

**RELEVANT DOCKET ENTRIES  
(Complete)****United States Bankruptcy Court****Date of  
Filing**

01/13/86	Ex1	Voluntary Petition
01/23/86	Ex2	Objection to Debtor's Claim of exemptions by Helen Owen
01/28/86	Ex3	Request for Admissions by Helen Owen
02/18/86	Ex4	Motion to Stay Entry of Dis- charge by Helen Owen
02/18/86	Ex5	Motion to Condition Order of Discharge by Helen Owen
02/25/86	Ex6	Order that Motion to Stay Entry of Discharge be DENIED without prejudice
02/25/86	Ex7	Order that Motion to Condi- tion Order of Discharge be DENIED without prejudice
03/05/86	Ex8	Proof of Claim and Power of Attorney by Helen Owen
05/19/86	Ex9	Discharge of Debtor
08/13/86	Ex10	Order on Objection to Claim of Exempt Property: Ordered that objection to exemption claim filed by Helen Owen be overruled and that sub- ject property shall not be turned over to the Trustee (cont.)

04/20/87	Ex21	for administration for the benefit of the creditors of the estate without further interference from the Bankruptcy Court
08/20/86	Ex11	Motion for Extension of Time by Helen Owen
08/26/86	Ex12	Order that time within which Helen M. Owen may file a Notice of Appeal from the order dated 08/13/86 be extended to 09/12/86
12/12/86	Ex13	Motion to Avoid Lien by Dwight H. Owen
12/16/86	Ex14	Application to Re-Open Chapter 7 case by Dwight H. Owen
12/19/86	Ex15	Order that Motion to Avoid Lien filed by Helen Owen be DENIED without prejudice
01/08/87	Ex16	Notice of Hearing on Application to Reopen Estate by Debtor
01/27/87	Ex17	Rescheduled Notice of Hearing on Application to Reopen Estate by Debtor
02/17/87	Ex18	2nd Rescheduled Notice of Hearing on Application to Reopen Estate by Debtor
03/20/87	Ex19	3rd Rescheduled Notice of Hearing on Application to Reopen Estate
04/13/87	Ex20	Motion to Avoid Lien by Debtor

04/20/87	Ex21	Order that Debtor's Motion to reopen be GRANTED; that this cause is reopened for the limited purpose of permitting Debtor to file a Motion to Avoid Lien within 30 days of the date of this order
04/23/87	Ex22	Order that respondent be directed to file written response be GRANTED
04/30/87	Ex23	Response to Motion to Avoid Lien by Helen Owen
05/26/87	Ex24	Notice of Hearing on Motion to Avoid Lien filed by Debtor
12/01/87	Ex25	Order that Motion to Avoid Judgment Lien of Helen Owen be GRANTED and the judgment lien of Helen Owens be deemed to be invalid and of no force and effect
12/07/87	Ex26	Motion to Amend or Make Additional Findings of Fact Pursuant to Rule 7052(b), to Alter or Amend the Order on Motion to Avoid Judgment Lien Pursuant to Rule 9023, and for a new trial pursuant to Rule 9023 of the Bankruptcy Rules by Helen Owen
01/17/88	Ex27	Order granting creditors meeting
02/08/88	Ex28	Order that Motion to Amend be GRANTED; that Motion to Avoid Judgment Lien entered (cont.)



04/07/88	5	be AMENDED; that Debtor's Motion to Avoid Judgment Lien be DENIED
04/20/88	7	
02/16/88	Ex29	Notice of Appeal
02/23/88	Ex30	Designation of Record and Statement of Issues by Debtor
06/07/88	10	
03/22/88	Ex31	Transcript of Motion Hearing 08/21/87
 <u>United States District Court</u>		
03/25/88	*	Notice to Counsel - letter advising of District Court Case Number sent to all counsel and bankruptcy court
04/04/88	2	Emergency Motion for Order Permitting the Filing of Appeal Brief in accordance with Rule 8010 of the Bankruptcy Rules of Procedure
04/04/88	3	Affidavit of Roger L. Fishell and proposed order attached
04/05/88	4	Supplemental Transmittal of Record to District Court with Certified Copy of Docket Sheet attached
04/05/88	5	Order that motion be GRANTED Appellant may file a brief in excess of 20 pages but not to exceed 35 pages and may exercise right to file a reply brief

04/07/88	6	Brief of Appellant
04/20/88	7	Brief of Appellee
04/28/88	8	Request for Oral Argument by Appellant
04/28/88	9	Reply Brief of Appellant
06/07/88	10	Order that Order on Motion to Amend or Make Additional Findings and to Alter or Amend Order on Motion to Avoid Judgment Lien filed 02/08/88 is AFFIRMED. The Clerk is directed to enter Judgment in accordance with this Order.
06/07/88	11	Judgment that the Bankruptcy Court's Decision is AFFIRMED
06/21/88	12	Notice of Appeal of order affirming Bankruptcy Court by Dwight Owen
06/21/88	*	Transmittal letter to USCA forwarding certified copies of docket entries, notice of appeal, order/judgment appealed from
06/27/88	13	Acknowledgment of Notice of Appeal by USCA
07/05/88	14	Motion to Temporarily Retain Record by Appellant. GRANTED
07/05/88	15	Appellant's Rule Certifi- cation

- 07/05/88 \* Correspondence from U. S. Court of Appeals requesting copies
- 08/05/88 \* Transmitted certified copy of Docket Sheet and Copy of Motion to Temporarily Retain Record by Appellant to USCA per request
- 10/27/88 \* Request from USCA to forward File FRAP Rule 11
- 10/31/88 \* Transmittal letter to USCA forwarding 1 volume of pleadings and 1 volume of exhibits

United States Court of Appeals

- 09/15/88 Brief of Appellant Dwight H. Owen and Records Excerpts
- 10/17/88 Brief of Appellee Helen Owen
- 10/25/88 Reply Brief of Appellant Dwight H. Owen
- 02/06/89 Oral Argument
- 07/11/89 Opinion of the United States Court of Appeals affirming the decision of the United States District Court
- 07/11/89 Judgment of the United States Court of Appeals affirming the judgment of the United States District Court



07/28/89 Petition for Rehearing and  
Suggestion for Rehearing In  
Banc filed by Dwight H. Owen

08/31/89 Order Denying Petition for  
Rehearing and Denying  
Suggestion for Rehearing In  
Banc

United States Supreme Court

11/29/89 Petition for Writ of Certiorari  
to United States Court of  
Appeals, 11th Circuit, filed  
by Dwight H. Owen

04/16/90 Respondent's Response to  
Petition for Writ of Certiorari  
filed by Helen Owen

05/14/90 Order Granting Petition for  
Writ of Certiorari



# UNITED STATES BANKRUPTCY COURT

---

Order on Motion to Amend or Make  
Additional Findings of Fact Pursuant to  
Rule 7052(b) and to Alter or Amend the  
Order on Motion to Avoid Judgment Lien  
Pursuant to Rule 9023 (Printed as Appen-  
dix to Petition for Writ of Certiorari  
pp. A24 - A27).

## UNITED STATES DISTRICT COURT

---

Order and Judgment Affirming Order  
on Motion to Amend or Make Additional  
Findings of Fact Pursuant to Rule 7052(b)  
and to Alter or Amend Order on Motion to  
Avoid Judgment Lien Pursuant to Rule  
9023 (Printed as Appendix to Petition for  
Writ of Certiorari, pp. A13 - A23, A32).

**UNITED STATES COURT OF APPEALS**

---

Opinion and Judgment affirming the  
United States District Court (Printed  
as Appendix to Petition for Writ of  
Certiorari, pp. A1 - A12, A30 - A31).

Order Denying Petition for Rehearing  
and Suggestion for Rehearing In Banc  
(Printed as Appendix to Petition for Writ  
of Certiorari, pp. A28 - A29).

**UNITED STATES SUPREME COURT**

---

Order Granting Petition for Writ of  
Certiorari entered 14 May 1990.

## FEDERAL

## STATUTORY PROVISIONS INVOLVED

---

11 U.S.C. § 522(b)

Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Bankruptcy Rules, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties can

not agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed. Such property is --

(1) property that is specified under subsection (d) of this section, unless the state law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,

(2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place; and

(B) any interest in property in which



the debtor had, immediately before the commencement of the case, an interest as tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.

11 U.S.C. § 522(f)

Notwithstanding any waiver of exemptions, the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is --

(1) a judicial lien;

## FLORIDA

## CONSTITUTIONAL PROVISIONS INVOLVED

## Article X, Section 4, Florida Constitution

(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:

(1) a homestead, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, which shall not be reduced without the owner's consent by reason of subsequent inclusion in a municipality; or if located within a municipality, to the

extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or his family;

(2) personal property to the value of one thousand dollars.

(b) These exemptions shall inure to the surviving spouse or heirs of the owner.

(c) The homestead shall not be subject to devise if the owner is survived by spouse or minor child, except the homestead may be devised to the owner's spouse if there be no minor child. The owner of homestead real estate, joined by the spouse if married, may alienate the homestead by mortgage, sale or gift and, if married, may by deed transfer the title to an estate by the entirety with the spouse. If the owner or spouse is incompetent, the method of alienation or encumbrance shall be as provided by law.

---

Amended, general election, Nov. 7, 1972; general election, Nov. 6, 1984.

# Article XI, Section 5, Florida Constitution

(c) If the proposed amendment or revision is approved by vote of the electors, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.



## FLORIDA

## STATUTORY PROVISIONS INVOLVED

---

Chapter 222.20, Florida Statutes

In accordance with the provision of s. 522(b) of the Bankruptcy Code of 1978 (11 USC s522(b)), residents of this state shall not be entitled to the federal exemptions provided in s. 522(d) of the Bankruptcy Code of 1978 (11 USC s522(d)). Nothing herein shall affect the exemptions given to residents of this state by the State Constitution and the Florida Statutes.